IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 4254 of 2007(F)

PETITIONER:

P.R. SHAJU, AGED 42,
S/O. RAPPAI, PUTHEDATH HOUSE, P.O. ALAGAPPANAGAR,
AMBALLUR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. THE ALAGAPPANAGAR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY (SPECIAL GRADE),
P.O. ALAGAPPANAGAR, THRISSUR DISTRICT.

2. THE HON'BLE TRIBUNAL FOR LOCAL SELF
GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

ADDL. R3 & R4 IMPLEADED.

3. THE POLLUTION CONTROL BOARD,
REP. BY THE ENVIRONMENTAL ENGINEER,
POONKUNNAM P.O., THRISSUR.

4. THE DISTRICT MEDICAL OFFICER,
THRISSUR.

ADDL. R3 & R4 IMPLEADED AS PER ORDER IN I.A.2220/07 ON 14.2.2007.

R1 BY ADV. SRI.T.N.MANOJ
R3 BY ADV. SRI. M.K.CHANDRAMOHAN DAS.
R4 BY GOVT.PLEADER SRI. BASANT BALAJI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.4254 of 2007

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Dated this the 2nd day of August, 2007

JUDGMENT

Petitioner challenges Exts.P8, P9 and P12 and seeks a direction to grant renewal of the licence to the petitioner to conduct the pig farm, which is the subject matter of Ext.P12 in such time as may be prescribed by the court in the interests of justice. Case of the petitioner in brief is as follows:

Petitioner is running a piggery in about one acre of land. There are about 150 pigs. It was put up in the year 2002. Ext.P1 is the licence granted by the respondent Panchayat dated 2.7.2004. Petitioner constructed required sheds, Septic tank and water treatment plant. It is stated that the entire shed is constructed by using granite bolder and building blocks. He refers to various other things done. Ext.P2 is the consent given by the Pollution Control Board dated 1.4.2005. Due to political reasons, it is stated, the petitioner and members of the Panchayat fell apart. He has invested Rs.25 Lakhs for the purpose of piggery, including purchase of land, effecting constructions and

making all other arrangements in this regard. There was an earlier decision of the Panchayat, which came to be impugned before the Tribunal as evident from Ext.R1(a). The Tribunal set aside the order passed by the Committee and directed the Panchayat to take a fresh decision on the application of the petitioner dated 6.2.2006 after getting a report from the District Medical Officer as to whether the operation of the pig farm is in compliance with Ext.P5 therein. Ext.P5 is Ext.P6 in this writ petition. It is the report of the Medical Officer produced to show that the alleged deficiencies were rectified. Ext.P12, which is impugned in this case is the order passed by the Tribunal against the order passed by the President, which was endorsed by the Committee, by which the Committee has endorsed the view of the President that that piggery of the petitioner has to be closed down. In arriving at the said conclusion Ext.P10 report of the Medical Officer dated 8.9.2006 is relied on.

2. I heard counsel for the petitioner Sri. Sreekumar.G. (Chelur) and Sri.T.N. Manoj appearing on behalf of the respondent Panchayat.

3. Learned counsel for the petitioner would contend that the Panchayat Secretary was directed to take a decision. But in this case the President took a decision and it is endorsed by the Panchayat Committee. This is contrary to the direction given in Ext.P7. He also submits that the Panchayat Committee itself ought to have decided. He further contends that Ext.P10 report of the Medical Officer, which is in fact a report on the alleged inspection done by the Technical Assistant, is made without conducting any inspection. He would submit that even though the report is adverse to the petitioner, it is contradicted by Ext.P6 report of the Medical Officer. He further submits that he was not given ample opportunity to substantiate his case as his father, who is above 90 years old was ill and he was disabled from attending the hearing and notice was served in his absence by affixture and therefore he could not avail of the hearing. He would submit that huge amount is invested. There are eight employees, he contends. The piggery is located in a land covering about one acre of land and the nearest house is located nearly 100 meters from the

farm, he contends. He took me through Ext. P9, which is the decision of the Panchayat. He would contend that the statement therein that the dimension of the septic tank is not as contained in the plan is unacceptable. In Ext.P9 incidently it is noted that though the dimension ought to have been 7.5 meters x 3 meters, it was found to be 5.8 meters x 3 meters. He would further submit that there are no aggrieved persons as such. He would submit that the petitioner is willing to adopt measures so as to make it pollution free. He would submit therefore that if a third report is called for, it would show the real state of affairs.

4. Petitioner also relied on the decision of the Supreme Court reported in **Essar Oil Ltd. v. Halar Utkarsh Samiti** ((2004) 2 SCC 392). Therein the A Wpex Court ofcourse has emphasised the need for a balance to be st ruck between developmental needs and the maintenance of ecology.

5. Per contra Sri.T.N.Manoj, learned counsel for the respondent Panchayat would contend that there is no merit or bonafides in the case

of the petitioner. He would submit that the petitioner was infact conducting the piggery earlier in another Panchayat, namely, Thrikkur Panchayat and on account of pollution it caused, it had to be stopped and it is thereafter he came over and started the piggery in the respondent Panchayat. The licence was granted on the basis of the plan submitted by the petitioner. But the petitioner has not acted in the manner as he ought to have. In this connection he would submit that the finding in regard to the dimension of the septic tank stands corroborated by Ext.R1(b). Ext.R1(b) is the report of the Secretary, wherein the very same complaint regarding the variation in the dimension of the tank is repeated. That apart, he would invite my attention to Exts.R1(f), R1(h), R1(i), R1(j), R1(n), R1(o) and R1(l). Ext.R1(f) is dated 22.7.2004, which reads as follows:

> "Based on the inspection conducted on 14.7.2004, directions were given to the owner of the pig farm to provide proper treatment facilities for solid and liquid waste. Directions were also given to the Panchayath to withheld the license of the unit until they obtain the consent

of the Board and provide proper treatment facilities. This is for your information."

Ext.R1(h) is dated 16.11.2006. It is issued by the Environmental Engineer to the petitioner. It reads as follows:

"Please recall the inspection conducted by the Board officials on above mentioned date. During the inspection it has been noticed that, you are disposing the pig dung and all other solid wastes including plastic wastes within your premises without any proper treatment. Also it has been noticed that you are not operating the effluent treatment plant properly. The analysis report of effluent sample collected from the outlet of your effluent treatment plant shows excessively high value of BOD which confirming that the operation of the effluent treatment plant is not proper. Hence you are hereby directed to provide a bio-gas plant within your premises for solid waste disposal and to operate the effluent treatment plan properly with immediate effect and report to this office. Any failure in complying with this order shall lead to the withdrawal of consent issued for the operation of the farm."

Ext.R1(i) is dated 19.1.2007. It shows that the Environmental Engineer

had granted time upto 21.3.2007 to put up the bio-gas plant, and it is stated that it is only on completion of whatever is necessary that the firm can be continued. Ext.R1(j) is dated 5.3.2007. It is a show cause notice issued by the Environmental Engineer. Therein it is stated as follows:

> "Whereas during inspection dated 28.2.2007 by the Board officials it has been noticed that you are
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> i. discharging the untreated effluent directly to the premises of the unit.
>
> ii. Not operating the effluent treatment facility.
>
> iii. Burning the left over solid wastes and plastic wastes in open yard and the smoke evolved during burning is causing nuisance to the neighbours.
>
> iv. Not maintaining the premises of the unit in a hygienic manner due to improper housekeeping.
>
> v. burying the solid wastes from the collection tank and the shed in the compound itself which is being carried away by stray animals."

Thereafter it is stated that the petitioner has not complied with the

conditions of consent and the construction work of the bio-gas plant as per letter dated 19.1.2006 has not been started. Ext.R1(n) and Ext.R1 (o) are issued by the Environmental Engineer of the Pollution Control Board. They reflect various levels found on inspection by the Pollution Control Board. Learned counsel for the respondent Panchayat points out that this is against the various limits prescribed in Ext.P2, which is the consent to operate. Apparently the documents were made over to the Panchayat as evident from Ext.R1(l) letter. Of course learned counsel for the respondent also relied on Ext.R1(k). This is a judgment delivered by the Principal Sub Court, Irinjalakuda in a suit filed against the petitioner. The judgment reveals that the suit stands decreed. Of course, learned counsel for the petitioner points out that appeal is pending against the same and the judgment stand stayed.

6. It is in the light of these materials that the court has to consider under Article 226 whether judicial review would justify the grant of relief sought for by the petitioner. Let me take the complaints of the petitioner one by one. The first complaint is that it is the

Panchayat Secretary who had to consider the matter. I find on a perusal of Ext.R1(a) that the direction is issued not to the Secretary but to the Panchayat. When a direction is issued to the Panchayat, the competent authority in the Panchayat would be the Committee. Of course the decision is taken by the President. But I find it difficult to accept the further contention of the petitioner that even though the said decision by the President is endorsed by the Committee, there is still no decision by the Committee. When a decision taken by the President is endorsed by the Committee, it will be equivalent to the decision taken by the Committee. At any rate what I will find herein after dissuades me from exploring further the tenability of the argument as I find that on the materials placed before this court no purpose would be served on a fresh decision being taken by the Committee itself.

7. One of the complaints of the petitioner is that there was no inspection conducted before Ext.P10 report. Ext.P10 report would show a very unsatisfactory state of affairs as far as the piggery is concerned. The Tribunal has after discussion found on a perusal of the

files that the report was prepared after inspection. This court has not admitted the matter even though the DMO is made a party. I find it difficult to accept the contention that there was no inspection and Ext.P10 is a product of the imagination of the officer concerned. In this matter it is not as if Ext.P10 stands in isolation. There are contemporaneous materials available on record, which goes a long way to establish the state of affairs prevailing in the piggery as already noted Ext.R1(h) in particular. Ext.R1(h), as already noted is dated 16.11.2006. Ext.P10 report is dated 8.9.2006. That is to say that Ext.P10 and Ext.R1(h) are seen dated around the sametime. A perusal of Ext.R1(h) would show that there is pollution. There are also other materials, which are relied on by the Panchayat which I have already referred to, which unquestionably goes to show that the piggery is being run in a state where it causes pollution. The fact is that Ext.P6 is contrary to Ext.P10. It was found that Ext.P6 supports the petitioner and Ext.R1(a) was passed remitting the matter back for a fresh report. The question is whether Ext.P10 inspires confidence of this court.

There is a presumption that official acts are performed correctly. That apart, as already noted the respondent correctly draws support from the various documents, which have been produced and which have been made available by the Pollution Control Board. There is no case in the reply affidavit also, which would go to show that the documents issued by the Pollution Control Board cannot be relied on or that they are challenged by the petitioner before any authority. Therefore I can safely rely on those documents also. If I rely on those documents, the cumulative result would be that there are materials which would unerringly point to the situation pointed out in Ext.P10 being acceptable and correct. If that is so, I would not lay much store on the contention of the petitioner that it is unreliable as there is no inspection. No private party has got himself impleaded before this court. But the Panchayat is there defending the litigation and it is pointed out by Sri. Manoj that private persons had also shown their resentment against the running of the piggery. That apart, the materials relied on including the report of the Pollution Control Board against whom there is no case of

any bias by the petitioner would together show that the case of the Panchayat that there is pollution caused is clearly acceptable. In this regard, I also remind myself that I am considering the matter under Article 226 of the Constitution and not in appeal as if I could re-open the findings of fact which have been rendered by the Tribunal. The materials on record would only reinforce the case of the respondent in supporting the findings arrived at by the Tribunal. Political rivalry is another issue projected by the petitioner. But I must note that this case is patently unacceptable for various reasons. In the first place one of the circumstances relied on by the petitioner is the involvement of the President against the petitioner. In this regard he would point out Ext.P9 in arriving at the finding regarding the dimension of the tank. But as already found by me, the Secretary of the Panchayat has issued Ext.R1(b), wherein also the very same findings are reiterated, which shows that petitioner has not constructed the tank as offered by him. That apart, the materials in the form of communications addressed by the Pollution Control Board can safely be relied on to repel the

contention of the petitioner that it is political rivalry which has led to the action of the Panchayat. The up shot of this discussion is that the petitioner has not made out any case for interference with the order of the Tribunal or with Exts. P8, P9 and P12.

8. I think that the petitioner is misplaced in relying on the judgment of the Apex Court in the facts of this case. He submits that the court should always try to struck a balance between development and environment. Here the issue is one where materials forming a chain and staring at one's face, as they do altogether demonstrate the existence of a situation where pollution is established. In particular the materials relied on by the Panchayat issued by the Pollution Control Board would go to show that the balance is clearly weighed against the running of the unit by the petitioner.

9. Having regard to all facts the writ petition is only to be dismissed. But at the same time it is ordered that the petitioner will be given a period of one month from today to close down the piggery. It is further made clear that the petitioner will not acquire any new piglet

during the course of this period of one month. Further in the meantime I make it clear that it is open to the petitioner to move the DMO and Pollution Control Board and take such measures as they stipulate and comply with the same and then approach the respondent Panchayat, in which case it is open to the respondent Panchayat to take up the case of the petitioner for continuing the piggery at the same premises.

Subject to the same, the writ petition is dismissed.

(K.M. JOSEPH, JUDGE)

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